IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24390 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ASHWINBHAI AMICHANDBHAI KHAMBHATI (KANDOI) & 1 - Petitioner(s)
Versus
RAKESHPRASAD MAHENDRAPRASAD PANDE - Respondent(s)

==========

Appearance :
MR RC KAKKAD for Petitioner(s) : 1 - 2.
MR SK PATEL for Respondent(s) : 1,
MR MRUGEN K PUROHIT for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 14/12/2006

ORAL JUDGMENT

1. Rule. Mr.Mrugan Purohit, learned advocate waives service of Rule on behalf of the respondent.

2. Shri Ashwinbhai Amichandbhai Khambhati (Kandoi)

and Shri Mahendrabhai Jechandbhai Patadia – petitioners – original plaintiffs herein, have filed this petition under Article 227 of the Constitution of India praying that this Court may issue a writ of certiorari, or any other appropriate writ, order or direction, quashing and setting aside the impugned judgment and order dated 15th Sept.2006 passed by the learned Presiding Officer, Fast Track Court No.2, Rajkot in Civil Misc.Appeal No.62 of 2006 and also to quash and set aside the judgment and order dated 1st July 2006 of the 6th Addl.Senior Civil Judge, Rajkot passed in Regular Civil Suit No.207 of 2006 below Exh.5 by virtue of it allowing application Exh.5 as prayed for in Regular Civil Suit No.207 of 2006.

3. I have heard Mr.R.C.Kakkad, learned advocate for the petitioners-original plaintiffs. He has made the following submissions in this behalf:

3.1 The present petitioners are the original plaintiffs – appellants and the present respondent is the original defendant. The plaintiffs filed a suit being Regular Civil Suit No.207 of 2006 against the defendant for declaration and permanent injunction. It is the case of the plaintiffs that they are the followers of Swaminarayan Sect and are the good saintly company (Satsangi) and the said Sect filed a suit for declaration and permanent injunction against the respondent – defendant restraining the defendant from acting as Aacharya of Vadtal Desh Swaminarayan Cult as well as restraining him from taking part as

acting Acharya of Vadtal Desh Swaminarayan Cult in any function of Gurukul and Murti Pratistthan at Rajkot etc. even though, defendant was going to remain present and preside over the function arranged in Rajkot between 3rd July 2006 to 5th July 2006 for Murti Pratistthan at Rajkot. The plaintiffs had preferred an interim application for interim injunction restraining the defendant to be remained present and preside over the said function.

3.2 The respondent – defendant appeared and pleaded that the suit of the plaintiffs is not bonafide and the facts stated therein are absolutely incorrect and therefore, the plaintiffs have no actionable rights and therefore, the suit be dismissed.

3.3 The plaintiffs have referred to Resolution No.24 passed on 7th May 1993 passed by the Board of Managing Trustee of Vadtal Temple in this behalf. In paragraph No.9 of the plaint, the plaintiffs have mentioned the cause of action and stated that they have also filed suit against respondent that he is functioning as Acharya and misusing his position in connection with the activities of the Swaminarayan Temple and also Hari Temple and is misappropriating the income of the said Temple in this behalf. In the suit, the petitioners have prayed that the respondent should not be allowed to act in the capacity of Acharya as he is not holding the position of Acharya and he should not be allowed to function himself as Acharya.

3.4 The respondent should not be allowed to act as Acharya of Vadtal Temple and may not allow any other persons to act in this behalf. Further, the respondent also should not act in the capacity of Acharya in installation of God and Goddess in this behalf. The said suit was filed on 26th June 2006. The plaintiffs have also prayed for relief to restrain the newly appointed Acharya – Shri Rakeshprasad Mahendraprasad Pande on 31.1.2003 from functioning as Acharya of Vadtal Desh.

3.5 The respondent filed reply to the injunction application as well as written statement in this behalf. In the written statement, the respondent has stated that earlier dispute has arisen and the trial Court has decided the same. However, the matter reached to this Court and thereafter, it had gone upto the Honourable Supreme Court, which came to be disposed of.

3.6 In view of all these facts divulged by the plaintiffs, it appears that the plaintiffs have, in fact, suppressed material facts in the suit as well as in the injunction application. The plaintiffs have tried to mislead the Court in this behalf. The plaintiffs have not come with clean hands in this case.

3.7 As regards the balance of convenience is concerned, it is stated that the institution of

Swaminarayan Gurukul had been working since 60 years and is carrying on educational as well as social activities also. The Institution has people who are in need of help at the time of earth-quake or other natural calamities in this behalf. The Institution has also a medical dispensary where the health problems of poor and down-trodden are taken care of. There is also clinic to treat ill affected animals. Thus, the Institution is run for public purposes and if the interim relief is not granted, it will jeopardize the interest of the plaintiffs and therefore, the balance of convenience lies in favour of the plaintiffs.

3.8 It is submitted that after hearing learned advocates for both the sides, the learned 6th Addl.Senior Civil Judge, Rajkot has rejected the application Exh.5 for ad-interim injunction on 1st July 2006, as stated hereinabove. The copy of the plaint is produced by the petitioners at Annexure.C at page No.75 of the compilation.

3.9 The respondent filed reply to the injunction application as well as written statement in this behalf. In the written statement, the respondent has stated that earlier dispute has arisen and the trial Court has decided the same. However, the matter reached to this Court and thereafter, it had gone upto the Honourable Supreme Court, which came to be disposed of.

3.10 It may be noted that when the suit was filed and the injunction application was filed, the learned trial Judge had not passed any order, but issued only notice to the respondent on 26th June 2006 as stated above, below application Exh.5.

3.11 Being aggrieved and dissatisfied with the aforesaid order, the petitioners-plaintiffs filed Civil Misc.Appeal No.62 of 2006 before the District Court, Rajkot. The said appeal was filed on 3rd July 2006. The Court issued notice on the same day. The respondent appeared before the Court and after hearing, the learned appellate Judge considered the judgment of the trial Court and held that the plaintiffs have approached upto this Court and Hon'ble Supreme Court but not succeeded. It has also been observed that if the defendant is carrying on any act against the established principles of Vadtal Desh Swaminaratan Cult, then plaintiffs have an option to be joined as party in the matter pending before Nadiad Court and may put their submissions according to law. It has been further observed that moreover, the lower Court has also considered that if the relief as sought for is granted, then it would cause great hardship to the respondent rather than petitioners as there was an arrangement of a function of Murthi Pratishthan at Rajkot between 3rd July 2006 to 5th July 2006 and upon that observation, the lower Court exercised its discretionary powers in favouar of the respondent.

3.12 The learned Judge considered two decisions of this Court and observed that considering the facts and circumstances, the Court does not deem it fit that there are circumstances warranting interference in exercise of discretionary powers of the lower Court and, therefore, the trial Court dismissed the appeal. The said order is passed on 15th Sept.2006 by the learned Presiding Officer, Fast Track Court No.2, Rajkot.

3.13 Being aggrieved and dissatisfied with the aforesaid judgment and order, the present petitioners – plaintiffs have preferred this petition under Article 227 of the Constitution of India.

4. I have heard Mr.S.N.Shelat, learned Senior Counsel; Mr.Harin P.Raval; Mr.Mrugan Purohit and Mr.S.K.Patel, learned advocates appearing for the respondent.

4.1 The learned advocate for the petitioners has submitted that there is no challenge to the legality and validity of the appointment of Acharya in the present suit, there is no challenge to the appointment of respondent as In-charge Acharya. The suit was filed against the respondent – defendant because when the respondent was acting in the capacity of In-charge Acharya, and therefore, the defendant is bound to act as per the principles laid down by the Swaminarayan Sect whereas the defendant is not acting as per Resolution No.24 and also as per

the “Shiksa Patri” more particularly in the Shlok No.132, “Vachnamrut” and also according to him, some of the Sadhus of Gurukul are carrying on activities which amount to punishment under the provisions of the Code of Criminal Procedure (“Cr.PC” for short) and proceedings against them had been initiated and the judgment has been delivered. Inspite of that, the defendant who is In-charge of Acharya is not acting as per Resolution No.24 and they haven't been removed by the present In-charge Acharya in this behalf.

5. Learned advocate for the petitioners submitted that the trial Court has not considered the principle of granting injunction with regard to prima facie case and balance of convenience. He has also submitted that the respondent is not properly acting as per Shlok Nos.180, 189, 190, 193 and 196 respectively of “Shiksa Patri” as has been stated above.

6. It may be noted that Mr.Kakkad, learned advocate appearing for the petitioners stated that the original plaintiffs have not challenged the legality and validity of the appointment of respondent as Acharya in the present suit but they were constrained to file the suit when the respondent is acting in the capacity of In-charge Acharya who is bound to act as per the principles laid down by Lord Swaminarayan and also in the interest of Sect whereas he is not acting as per Resolution No.24 and also as per the “Shiksa Patri” more particularly in Shlok No.132. The

same contention is taken in paragraph No.9 of the plaint.

6.1 On behalf of respondent, learned Senior Counsel Shri S.N.Shelat has submitted before this Court that, the petitioners do not challenge the appointment of the respondent as Acharya of Swaminarayan Sector for Vadtal Pradesh. It has been submitted that former Acharya Maharaj – Ajendraprasadji Narendraprasadji Pande, apprehending his removal as Acharya Maharaj of Vadtal Desh, filed Civil Suit No.45 of 2002 in the Court of learned Civil Judge (SD), Nadiad and prayed for being granted interim injunction so as to restrain his removal by way of filing interim injunction application No.Exh.5 somewhere in February 2002. However, no relief was granted and ultimately the said injunction application came to be dismissed and the suit is pending.

6.2 It is the case of the respondent that the petitioners have been set up as proxies by the former Acharya and that former Acharya Maharaj Shri Ajendraprasadji Narendraprasadji Pande was removed by “Satsang Mahasabha” on 11.5.2002. It has been further submitted that said Ajendraprasadji was removed as Acharya Maharaj by the Resolution of the “Satsang Mahasabha” passed on 11.5.2006, and on the same day, another Resolution was pass4ed by the Swaminarayan Sect constituting the Committee to select and recommend a suitable person for appointment to the Temple Board Trust from the

lineage of Dharma Deva as Acharya of Vadtal Swainarayan Sect of Southern Diocese.

6.3 According to the respondent, that despite the removal of Acharya Maharaj, certain Saints and Satsangis filed Special Civil Suit No.156 of 2002 in Nadiad on 6.9.2002 and ex-parte ad-interim injunction was granted restraining the Acharya who was removed as Maharaj from functioning as Acharya which was later on confirmed after bi-parte hearing on 1st Oct.2002.

6.4 Thereafter, the Committee appointed by Satsang Mahasabha made its recommendations on 7.10.2000. However, the appointment was not made in view of filing of the Appeal From Order No.421 of 2002 and the application for stay being Civil Application No.7250 of 2002 filed along with it wherein a prayer was made to restrain the appointment of the new Acharya. It was also prayed to restrain the respondent pending trial hearing and final disposal of the captioned Appeal From Order from appointing and/or nominating any person as Acharya of Vadtal Diocese of the Swaminarayan Sect and thereby permit original applicant No.1 to perform the duties of the Acharya as contemplated in the Scheme. However, till the said application was pending the new Acharya Maharaj was not installed. The aforesaid Civil Application No.7250 of 2002 was rejected by this Court on 30.1.2003. Thereafter, on 31.11.2003, after performance of full Vedic rights and religious

ceremony in view of the recommendations of the Committee new Acharya Maharaj was appointed for Southern Diocese of Swaminarayan Sect.

6.5 It has been further submitted that immediately on appointment, on 1.2.2003, the removed Acharya and his son filed Civil Application No.611 of 2003 in Appeal From Order No.421 of 2002 for restraining the appointment of new Acharya and if appointed to restrain him from functioning. However, the said application was never pursued and therefore, no order was passed.

6.6 It has been further submitted that at the behest of the former Acharya Maharaj, certain supporters filed Civil Suit No.41 of 2003 at Gadhda and prayed for the relief to restrain the newly appointed Acharya from functioning. However, the trial Court did not grant any ad-interim relief in the suit.

6.7 It is submitted that having failed to obtain injunction from the Civil Court at Gadhda, Shri Madhubhai Thakarshibhai filed a similar suit being Regular Civil Suit No.46 of 2003 containing identical contentions that of Civil Suit No.41 of 2003 before the Court of learned Civil Judge, at Surat along with an application for interim injunction at Exh.5. The said suit was filed somewhere in February 2003.

6.8 In all these proceedings, the petitioners-plaintiffs could not get any ad-interim relief as

prayed for and therefore, they filed another Regular Civil Suit No.17 of 2003 before the Civil Judge, Sr.Division, at Anand. The learned advocate pointed out that one of the plaintiffs was not a Trustee of the Gadhda Temple Board and the suit was filed at Anand which is 300 miles away. The said suit was filed on 16.2.2006, i.e. On Sunday at the Judge's residence and obtained ex-parte order at about 8.30 p.m. Restraining the new Acharya from functioning.

6.9 Being aggrieved and dissatisfied with the said order, the Chairman of the Temple Botad Trust being original plaintiff No.2 in Regular Civil Suit No.17 of 2003 filed an appeal before this Court being Appeal From Order No.69 of 2003 along with Civil Application No.1411 of 2003 for interim orders on 25th Feb.2003. This Court, by order dated 27th Feb.2003 suspended the order of injunction and passed order that the trial Court shall proceed with application Exh.5 on its own merit and further held that since the trial Court at the time of deciding Exh.5 application, has to consider in great details, the point involved in the matter is at an ex-parte stage, it would be desirable that the application Exh.5 be decided by another Judge. Under the circumstances, the learned District Judge, Nadiad directed that the matter i.e. Regular Civil Suit No.17 of 2003 be assigned to another Civil Judge, if there is no other Senior Division Court at Anand and accordingly the Rule in Civil Application was made absolute. This matter is reported in **2003 (1) GLH 560** in the case of

Nautamswami Guru Vasudev v. Hasrjibhai Nanjibhai Bhimani.

6.10 Being aggrieved by the aforesaid judgment and order of this Court, the ousted Acharya filed a SLP (C) No.3351 of 2003 before the Hon'ble Supreme Court of India, which was disposed of by the Hon'ble Supreme Court on 7.7.2003 directing this Court to ensure the hearing and disposal of the appeal as expeditiously as possible either by the same learned Judge, who heard the matter earlier or by another learned Judge before whom it then stood listed.

6.11 Thereafter, after the remand, the matter reached to this Court and this Court vide detailed judgment and order dated 6th May 2004 dismissed the Appeal From Order No.421 of 2002. This judgment is reported in **2004 (3) GLR 2081** in the case of **Ajendraprasadji Narendraprasadji Pande Swami Keshavprakashdasji Narayanapriyadasji**.

6.12 The removed Acharya – Ajendraprasadji Pande being aggrieved by the aforesaid judgment dated 6th May 2004 rendered in Appeal From Order No.421 of 2002 dismissing it, filed Special Leave Petition No.15380 of 2004 before the Hon'ble Supreme Court. His son, who was petitioner No.2 herein filed separate Special Leave Petition No.16128 of 2004. The plaintiffs of Regular Civil Suit No.17 of 2003 preferred yet another (third) SLP No.17836 of 2004 challenging judgment and order dated 6th May 2004 contending that

Appeal From Order No.69 of 2003 was not heard by the this Court. The Hon'ble Supreme Court, by judgment and order dated 13th May 2005 remanded Appeal From Order No.421 of 2002 to this Court to be decided in accordance with directions contained in the said judgment without going into merits of any of the SLPs and the contentions urged by the parties for fresh consideration. The said judgment is reported in **(2005)10 SCC 11** in the case of **Ajendraprasadji Narendraprasadji Pandey v. Swami K. Narayandasji and others**.

6.13 After the order of remand, this Court vide order dated 5.10.2005 rejected Appeal From Order No.421 of 2002 holding that they have no case and allowed Appeal From Order No.69 of 2003 filed by the petitioners holding that they have made out a case and the order passed by the earned Judge below Exh.5 in Regular Civil Suit No.17 of 2003 was quashed and set aside.

6.14 The SLP (C) Nos.26472 of 2005 and 334 of 2006 filed by the petitioners came to be dismissed by the Court on 6.1.2006 and Review Petition No.321 of 2006 was dismissed on 4.4.2006. However, the Hon'ble Apex Court directed the trial Court to dispose of the suit as expeditiously as is conveniently possible, preferably with day-to-day basis.

6.15 It is the case that the present suit filed by the petitioners – plaintiffs in the Rajkot Court,

praying for relief to restrain the newly appointed Acharya Maharaj Shri Rakeshprasad Pande appointed and installed on 31.1.2003 from functioning as Acharya Maharaj of Vadtal Desh and also from restraining him from attending the function to be celebrated at Rajkot Gurukul Institution from 3.7.2006 to 5.8.2006.

7. The learned Counsel for the respondent has also stated that in view of the fact that the plaintiffs' giving up the challenge to the appointment of Acharya, they are not entitled to any relief as prayed for in Exh.5. It was further submitted that in paragraph No.9 of Exh.5 it has been prayed to restrain the respondent from undertaking any activity as Acharya of Vadtal Temple Temple, Rajkot. It has been further submitted that once the plaintiffs have admitted that the appointment of Acharya is legal and valid, then, the Court, at the interim stage, cannot restrain the respondent to act as Acharya and as the balance of convenience is not in favour of the plaintiffs, no relief can be granted in this behalf. If any interim relief is granted in favour of the plaintiffs, the defendant will have to face great hardships.

8. I have considered the contentions of the learned advocate appearing on behalf of the petitioners as well as the learned advocate appearing on behalf of the respondent in this behalf. I have also considered the orders passed by the learned appellate Judge in

this behalf. In view of the fact that which has been set out by the respondent in this case, the learned trial Judge has rejected the injunction application on 1st July 2006 and while rejecting the said application, the learned Judge considered the earlier history of the litigation between the parties in this behalf which I have also narrated in paragraphs Nos.6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7 and 6.9 and also the judgment of this Court in the case of Nautamswami Guru Vasudev (supra) reported in 2003(1) GLH 560 and also disposal of the SLP before the Apex Court vide order dated 7.7.2003 and thereafter further order of this Court in the case of Ajendraprasadji Pande Swami Keshavprakashdasji Narayanapriyadasji (supra) reported in 2004 (3) GLR 2081 and also thereafter in the case of Ajendraprasadji Narendraprasadji Pandey v. Swami K.Narayandasji and ors. (supra), reported in (2005) 10 SCC 11. Thereafter, after the judgment of the Supreme Court, again the matter is heard by this Court which I have referred to in paragraph Nos.6.13 and 6.14. In view of the chequered history of this case, the petitioners have not been able to show any ground for admitting the Special Civil Application because the matter is concluded by the judgments of this Court and the Hon'ble Apex Court in this behalf. In view of this, I do not find any substance in this petition and the same is required to be rejected in this behalf. The petitioners have failed to establish any prima facie case as well as the balance of convenience and therefore, the petitioners are not

entitled to any relief as the petitioners have not assailed the findings of the learned trial Judge on any ground and this Court is not inclined to entertain this petition. Hence, the petition is rejected accordingly. Rule is discharged, with no order as to costs.

(K.M.Mehta, J.)

Sreeram.